IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2657 OF 2004

Shri Madhukar Mahadeo Manve,)
Age 30 years, Residing at)
C/o.Janta Colony Zopadpatti,)
Worli Koliwada,)
Mumbai - 400 025.)..Petitioner

Vs.

1. Shri A.N.Roy,)
Commissioner of Police,)
Bombay.)

2. The State of Maharashtra,)

3. The Superintendent,)
Nasik Road Central Prison,)
Nasik.)..Respondents

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Shri U.N.Tripathi for the petitioner.

Shri D.S.Mhaispurkar for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 19th April, 2005.

JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard. Perused the records. The petitioner challenges the order of detention passed under the

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, hereinafter referred to as "MPDA Act", dated 19th August, 2004 against the friend of the petitioner, viz. Sri Pramod alias Popatya Mahadev Adsul, on four grounds.

2. The materials on record disclose that the C.R.No.136 of 2004 came to be registered against the detenu at Dadar Police Station on 22nd June, 2004 under Sections 387, 323, 504, and 506(ii) read with 34 of Indian Penal Code, read with Sections 3 and 25 of Arms Act, pursuant to the complaint lodged by one Shri Ramkrishna Genu More. The detenu was arrested on 23rd June, 2004. He was remanded to the custody from time to time till 19th July, 2004. He was released on bail on 6th July, 2004, pursuant to the order dated 5th July, 2004 passed by the learned Additional Chief Metropolitan Magistrate, 5th Court, Dadar, on execution of the bond in the sum of Rs.7,000/- with one solvent surety in the like amount and on the condition that he should daily report at Dadar Police Station until further order. Meanwhile, in-camera statement of the Witness "A" came to be recorded on 25th June, 2004, and another in-camera statement of the Witness "B" came to be recorded on 28th June,

2004. The sponsoring authority proposed detention under the provisions of MPDA Act against the detenu on 23rd July, 2004, and ultimately the order of detention came to be passed on 19th August, 2004. The same was served upon the detenu on 20th August, 2004.

3. In fact, the petition filed for the quashing of the detention order against the co-detenu namely Chandrakant Prabhakar Todankar filed on the grounds which are canvassed in the present petition has already been dismissed by the judgment dated 7th March, 2005 in Criminal Writ Petition No.2427 of 2004. For the same reasons, the present petition is also liable to be dismissed.

4. The first ground of challenge to the impugned order of detention is that the subjective satisfaction of the detaining authority for the purpose of issuance of order of detention against the detenu is being vitiated since the detaining authority failed to take into consideration the fact that the detenu though was released on bail, the same was subject to his daily attendants at Dadar Police Station between, and there was no complaint of any violation of the terms of the bail order nor the records disclose any attempt on the part of the investigating agency to seek cancellation

of the bail, and that therefore, there was no case for clamping detention order against the detenu and in that regard, the detaining authority even failed to take note of the settled law that the detention is not substitute for punishment. Reliance is placed in the decision of the Apex Court in the matter of **Ramesh Yadav v. District Magistrate, Etah & Ors.,** reported in AIR 1986 SC 315. The contention of the petitioner in that regard is sought to be countered on behalf of the respondents while drawing attention to the affidavit-in-reply by the detaining authority wherein it has been stated that imposing condition of daily reporting at the police station did not sufficiently prevent the detenu from acting in any manner prejudicial to the maintenance of the public order, and taking into consideration the overall materials placed before the detaining authority including the order regarding grant of conditional bail and in-camera statements of the witnesses, the detaining authority was subjectively satisfied that the order of detention was the only remedy to curb prejudicial activities of the detenu.

5. The Apex Court in **Ramesh Yadav's case (supra)**, in the background of peculiar facts of the said case had highlighted the need for opposing bail application

rather than clamping detention order. The observations therein having been made in the peculiar set of facts, the same cannot be applied to the case in hand where the facts are totally different in nature.

6. As regards the contention that on account of conditional bail being granted, there was no occasion for the detenu to indulge in the activities prejudicial to the maintenance of public order and that there was failure on the part of the detaining authority to consider the same, it is to be noted that apart from the grounds of detention, the affidavit-in-reply clearly discloses that the detaining authority did take into consideration the fact that the detenu was released on conditional bail, as well as the fact that the same was not sufficient to prevent him from acting in any manner prejudicial to the maintenance of public order and clamping of detention order was the only remedy. Undoubtedly, the law of detention is to prevent future activities on the part of a person to be detained and it is not to be used as punitive action. Merely because the authorities did not move for cancellation of the bail, that will not amount to vitiate the subjective satisfaction arrived at by the detaining authority

against the detenu in each and every case. It is also to be borne in mind that the order relating to the bail is in relation to the offence to which investigation is carried out and charge-sheet is filed, whereas the order of detention in question does not relate to only one instance which is referred to in the charge-sheet. Undoubtedly, the order of detention has been issued after taking into consideration the various activities of the detenu disclosed from the investigation as well as the in-camera statements of the witnesses. That apart, the conditional bail merely required the attendance of the detenu at the police station for a period of two hours every day. That apart, criteria for grant of bail and the criteria to be followed to ascertain the need for detention of a person in custody, though in some aspects may be overlapping, are not essentially the same. The preventive detention is necessarily to prevent a person from indulging in an illegal activities in future. Being so, taking into consideration the grounds in support of detention order and the explanation furnished by the detaining authority in the affidavit-in-reply, the first ground of challenge is to be held as being without any substance.

7. The second ground of challenge to the impugned order of detention is that the first ground in support of the detention order as far as it relates to the statement of the complainant Ramkrishna Genu More is concerned, is totally vague and does not disclose details of the allegations made against the detenu thereby resulting in great prejudice to the detenu as it adversely affects his right to make effective representation available and assured to him under Article 22(5) of the Constitution of India, and therefore, the order of detention is bad-in-law. Referring to the paragraph 5(a)(i) of the grounds of detention, the learned Advocate for the petitioner has submitted that the ground therein reads that "Shri Ramkrishna Genu More is aware that several criminal cases are registered against you and your associate Chandrakant Prabhakar Todankar and you were arrested in those cases. You and your associates had extorted money from Shri Ramkrishna Genu More on many occasions." The learned Advocate for the petitioner has submitted that neither the grounds in support of detention order disclose which were those several criminal cases registered against the detenu nor the same disclose on what occasion the detenu had extorted the money from the said Ramkrishna Genu More, nor any materials regarding the said criminal cases were

disclosed, and yet the detaining authority has arrived at the subjective satisfaction regarding the need for issuance of detention order against the detenu based on such vague ground.

8. According to the learned Advocate for the petitioner, since it is not permissible for the detaining authority to arrive at the subjective satisfaction based on such vague ground and excluding the C.R.No.136 of 2004, there are only two in-camera statements and they being merely corroborative pieces of materials in support of the said C.R., the same cannot be read independently, and in that regard, no assistance can be derived from Section 5A of MPDA Act, and in such cases, no ground can be severable from other grounds. Reliance is placed in the decision in the matter of **Vashisht Narain Karwaria v. State of U.P. & Anr.,** reported in (1990) 2 SCC 629 as well as of Division Bench of this Court in **Mrs.Jainab Sale Mohammed v. M.N.Singh, Commissioner of Police & Ors.,** reported in 2002 ALL MR (Cri) 2305. The said challenge is sought to be countered on behalf of the respondents by contending that the statement in paragraph 5(a)(i) in the grounds in support of the detention order is merely a passing reference to the facts stated therein in order to complete the

narration of events in the complaint lodged by the complainant and the detaining authority has not relied upon the said narration for the purpose of arriving at the subjective satisfaction regarding need for issuance of the detention order against the detenu. Without prejudice, it is sought to be contended that, assuming that the detaining authority is not able to establish one of the grounds comprised under the grounds in support of the detention order, the order of detention can be justified on remaining grounds by resorting to the provisions of Section 5A of the MPDA Act, and in that regard, reliance is sought to be placed in the decisions in the matter of **Prabhakar Menka Shetty v. S.Ramamurthy, Commissioner of Police for Greater Bombay & Ors.,** reported in 1993 Cri.L.J. 1981, of the Apex Court in **Attorney General for India etc.etc. v. Amratlal Prajivandas & Ors. etc.etc.,** reported in 1995 Cri.L.J. 426, of **Kamarunnissa v. Union of India & Anr.,** reported in 1991 Cri.L.J. 2058, and of **Dharamdas Shamlal Agarwal v. The Police Commissioner & Anr.,** reported in AIR 1989 SC 1282.

9. Plain reading of the grounds of detention discloses that the detaining authority, after taking into consideration all the facts recorded in paragraph 5 of the grounds in support of the detention order,

has arrived at the subjective satisfaction about the detenu being a dangerous person within the meaning of the said expression under MPDA Act and the need for issuance of detention order against him. Undisputedly, the fact relating to the statement by Ramkrishna Genu More alleging the involvement of the detenu in criminal cases as well as extortion of money from the said Ramkrishna More by the detenu have been narrated in the said paragraph 5 of the grounds in support of the detention order. In the circumstances, the contention which is now sought to be raised in the affidavit-in-reply that it is merely a passing reference to complete the narration of events is to be rejected as being totally devoid of substance. Reading of the grounds of detention apparently discloses that the detaining authority has taken into consideration even the allegations made by Shri Ramkrishna More regarding the criminal cases having been registered against the detenu and the allegation regarding extortion of money from the said Shri Ramkrishna More by the detenu on many occasions. Undoubtedly, there is no reference to the particulars regarding the alleged criminal cases or the alleged extortion of money. The learned Advocate for the petitioner is justified in contending that the detenu is entitled to make effective representation against

the order of detention, and therefore the grounds in support of the detention order should be clear and should not be vague. As the said ground does not disclose details regarding the alleged criminal cases stated to have been registered against the detenu and the alleged extortion of money from Shri Ramkrishna Genu More, certainly the detenu was prejudiced in that regard in making effective representation, and the said order of detention based on the said ground cannot be sustained on that count. However, as submitted by the learned APP that the order of detention is not based solely on the said ground, but there are two more grounds, and undisputedly, the said grounds disclose the activities of the nature of extortion of money, and therefore, there was sufficient cause for the detaining authority to arrive at the subjective satisfaction for the purpose of issuance of detention order against the detenu. The contention that the said two grounds in support of the detention order are subsidiary to the main ground revealed from the said C.R.No.136 of 2004, and therefore, cannot be read independently, is a far-fetched argument, as those grounds clearly disclose that the activities of the detenu on different occasions were sufficient to arrive at the subjective satisfaction of the detaining authority for

issuance of detention order. The Apex Court in **Amratlal Prajivandas's case (supra)** had clearly held that where an order of detention is made on more than one ground, it must be deemed that there are as many orders of detention as there are grounds, which means that each of such orders is an independent order, and therefore, when an order is supported by more than one ground, and one or more grounds are found to be vague or irrelevant, nevertheless the order can be justified on the remaining valid ground or grounds. Considering the same, while holding the first ground to be invalid, it cannot be said that the impugned order of detention is totally bad-in-law.

10. The decision in **Kamarunnissa's case (supra)** is of no relevancy to the matter in hand. In the said case, it was held that, if an incidental reference is made to some part of the investigation concerning a co-accused in the grounds of detention which is not relevant as far as the case set up against the detenu is concerned, the detenu cannot contend that he was denied the right to make an effective representation, on account of non-supply of copies of the documents in relation to the incidents so referred. That is not the case in hand. The averment in paragraph 5(a)(i) of the grounds in support of the detention order

specifically refers to the allegation against the detenu by the complainant without giving any details regarding the allegation, and the said allegation was certainly taken into consideration by the detaining authority while arriving at the subjective satisfaction regarding need for issuance of detention order against the detenu.

11. The Division Bench of this Court in **Prabhakar Menka Shetty's case (supra)**, after taking into consideration the various earlier decisions, had held that "even if one or more of the grounds fail on the ground of non-supply of the documents thereby infringing Article 22(5), the said infringement will not invalidate the order if it can be sustained on the basis of the remaining grounds wherein the constitutional requirements of Article 22(5) are complied with."

12. The decision in **Vashisht Narain Karwaria's case (supra)** is of no help to the petitioner as that was the case wherein the detention order was based on single ground and once it was found that the same was based on some extraneous materials, there was no question of applicability of the provisions of Section 5A of MPDA Act. That is not the case in the matter in

hand.

13. The decision of Division Bench in **Mrs.Jainab Sale Mohammed's case (supra)** is absolutely of no relevance as that was the decision delivered in the peculiar facts of that case which were not similar to those in the case in hand.

14. In **Dharamdas Shamlal Agarwal's case (supra)**, the detaining authority had taken into account a non-existing fact for arriving at the subjective satisfaction for issuance of detention order. Besides, the said decision is of the Bench of two Judges whereas the decision in **Amratlal Prajivandas's case (supra)** is of the Bench of nine Judges. Besides, the decision in **Dharamdas Shamlal Agarwal's case (supra)** was delivered on 16th March, 1989 whereas the decision in **Amratlal Prajivandas's case (supra)** was delivered on 12th May, 1994. So, on all counts, we are bound by the decision of **Amratlal Prajivandas's case**, besides the same being directly on the point in issue.

15. For the reasons stated above, therefore, even though the order of detention cannot be sustained under the first ground in support of detention, the

same cannot be held to be bad-in-law, as it finds support from other two grounds based on in-camera statements of the said witnesses.

16. The third ground of challenge to the order of detention is that the materials referred to in the grounds in support of the detention order, at the most disclose the law and order problems and not the activities prejudicial to the maintenance of public order as such. It is the contention of the learned Advocate for the petitioner that every disorder cannot be equated to public disorder and considering the facts and the alleged threats and attempt for extortion of money having been stated to have made either in the house or in the lane and not in the public view as such, there was no case for arriving at the subjective satisfaction regarding the involvement of the detenu in criminal activities leading to the disturbance of public order. In that regard, attention was drawn to the decision of the Apex Court in **State of U.P. & Anr. v. Sanjai Pratap Gupta alias Pappu & Ors.,** reported in 2004 AIR SCW 5314. The decision sought to be relied upon, rather than assisting the petitioner lends support to the order of detention in question. The Apex Court therein, after taking note of various earlier decisions on the point

in issue, has held that "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed ?" It is further ruled that "the true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State." The in-camera statement of Witness "A" clearly discloses that it was widely discussed in the business circles that the detenu and his associates were the members of one Arun Gawali gang and were engaged in extortion spree and that the detenu and his associates were involved in the assaulting, threatening and destroying of the belongings of people who refused to accede to their demand. Considering the statement of the said witness, it was observed by the detaining authority in the grounds in support of the detention order that the detenu and his associates are the members of

underworld kingpin Arun Gawali and the victims are mortally scared and are reluctant to come forward with their complaints. The activities of the detenu also disclosed from his statement that he was engaged in extortion of money and for that purpose, did not hesitate to threaten the members of the public with the help of revolver. Similar is the statement of the Witness "B" which discloses that the detenu and his associates had created a reign of terror in the localities of Worli Koliwada, Janata Colony, Rumade Chowk, Mahakali Nagar Zopadpatti and the adjoining areas, and had engaged in extortion of money from the people at the point of revolver, threatening and assaulting those who refused to give the money demanded by him and also used to destroy the articles and belongings of his victims, however, those victims were not ready to complain against him due to the fear of reprisal at his hands. These narrations by the witness clearly disclose the involvement of the detenu in those activities which are sufficient to affect the even tempo of life of the society which can result in disturbance of the public order. Hence, the challenge on this ground is also without substance.

17. The last ground of challenge to the impugned detention order is that while the grounds in support

of the detention order do not disclose that the detenu belongs to ill famed Arun Gawali gang and yet the detaining authority was very much impressed by such allegation revealed from a copy of the documents in the form of remand application placed before the detaining authority. It is the contention of the learned Advocate for the petitioner that the extraneous materials having been collected and referred to in the grounds in support of the detention order, the same vitiates the validity of the order of detention. Undisputedly, the sponsoring authority had placed before the detaining authority a copy of the remand application which disclosed the allegation regarding involvement of the detenu in Arun Gawali gang. However, the said fact has also been considered by the detaining authority as it was revealed to the detaining authority from the statement of the witness "A" and the same has been clearly referred to that effect in the grounds in support of the detention order. Once it is revealed from the grounds in support of the detention order that the detaining authority was appraised of the fact regarding the involvement of the detenu in Arun Gawali gang from the statement of the witness "A", merely because there was additional material placed by the sponsoring authority as regards such allegation in the form of copy of the

remand application that would not mean that the detaining authority was influenced by any of the extraneous materials as such. Once the relevant information was revealed to the detaining authority from the statement of the witness, it cannot be said that merely because the said fact is also revealed from another document which was placed before the detaining authority and to which there was no reference in the grounds of detention order that there was a consideration of any extraneous materials for the purpose of arriving at the subjective satisfaction by the detaining authority. The fact regarding involvement of the detenu in Arun Gawali gang was not extraneous as such. The detaining authority was appraised of the said fact through the materials on record. Being so, the challenge on the last ground also fails.

18. For the reasons stated above, there is no case made out for interference in the impugned order of detention of the detenu Shri Pramod alias Popatya Mahadev Adsul, and therefore, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

(R.M.S.Khandeparkar, J)

(P.V.Kakade, J)